J. P. R./1-91 Crl 121/93

APPEAL OF PRISONER

No. 387 Name घुराऊराम

Father's name चनका राम

Residence ग्राम- कंवीस, थाना- कापू Age 25 वर्ष

Sentenced to आजीवन कारावास on 16-6-93.

Under Section 302 भा.द.वी. by माननीय प्रथम अपर सत्र न्यायाधीश सवाईमाधोपुर

It is explained to the prisoner that if he states he wishes to be represented by a legal practitioner the appellate Court will not proceed with the case for seven days unless the legal practitioner appears earlier. If the legal practitioner does not appear within seven days he may not heard at all. if the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement —

2 Date on which copy received —

3 Date on which Appeal sent 13-7-93

4 Whether the prisoner wishes to be represented or not. —

No. 387 Name घुराऊराम

Confined in — Jail जिला जेल सवाईमाधोपुर

No. 1076 Dated 13-7-93 1993

Forwarded to the श्रीमान् मुख्य न्यायिक दण्डाधिकारी महोदय सवाईमाधोपुर together with a copy of judgement or order passed in the case for favour of transmission to the proper Appellate court.

Superintendent 13/7/93
Jail

Date of receipt in — Office —

Date of receipt of record to accompany the —

Memo of Appeal to the Appellate court —

No. 62/CJM Rajgarh Dated 14.7.93 199

Forwarded to the Submitted to — SJ Rajgarh (Raj)

Basic Data Entered

14/7/93

Date of receipt in Appellate court —

J. P. T.

(23)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr. A. 1117 /93 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार, के अन्तिम आदेश

DIVISION BENCH
HON'BLE SHRI L.C.BHADOO, J
& HON'BLE SHRI DHIRENDRA MISHRA, J

Criminal Appeal No. 1117 of 1993

Appellant : Ghurouram

Vs.

Respondent : The State of Madhya Pradesh

Shri Abhay Tiwari, learned counsel for the appellant.
Shri U.N.S.Deo, learned G.A. with Shri Akhil Mishra, learned P.L. for the State/respondent.

ORAL JUDGMENT
(Delivered on 23rd January 2006)

L.C.Bhadoo, J

By this appeal the accused/appellant has questioned the legality of the judgment of conviction and order of sentence dated 16th June 1993 passed by First Additional Sessions Judge, Raigarh in Sessions Trial No. 18/93 whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for commission of murder of Shanichar convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life.

2. The case of the prosecution necessary for disposal of this appeal is that Balram (P.W.1)-uncle of the appellant lodged a report of P-1 in Police Station-Kaapu on 16.06.1992 to the effect that on Sunday 14.06.1992 on the occasion of Dhankuti festival all the family members had assembled at the residence of Balbhanj (P.W.4). Ghurouram asked Shanichar

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आदेश पत्रक

मामला क्रमांक Cr. A. 1117/93 सन् 2000

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(deceased) that he wants to construct the house on the "Noutod" land of village Tepudang, Shanichar refused to accede the request. But the same was not liked by the accused. The accused went to his house, brought a pickaxe and attacked with it on the right side of stomach of Shanichar as a result of which Shanichar fell down on the ground and blood started oozing out of the injury. Then he and Batru took Shanichar inside the house. House treatment was given to him, however, Shanichar succumbed to the injuries on 15.06.1992. On receiving this report the Station House Officer registered the offence under Section 302 of the IPC and left for the scene of occurrence. After giving notice (P-2) to the Panchas, Panchanamas of the body of Shanichar (P-3) and (P-4) were prepared. The accused while in police custody gave information (P-5) regarding the place where he kept the weapon of offence -pickaxe and in pursuance of that he got recovered the pickaxe under P-6. Under P-7 one wood stained with blood was taken into possession. One towel of the accused stained with blood was taken into possession under P-8. The clothes of the deceased were taken into possession under P-10. The area Patwari prepared the site plan P-11. Blood stained articles were sent for chemical examination to the Forensic Science Laboratory, Sagar from where the report P-16 was received and as per the report the blood was found on the pickaxe and lungi and on the clothes of the deceased. The body of Shanichar was sent for postmortem examination to the Primary Health Centre, Paththalgaon where Dr. G.K.Verma (P.W.9) conducted postmortem on the body of Shanichar and prepared the postmortem report (P-17) in which he opined that the cause of death is shock and hemorrhage due to the injuries in the intestine and right kidney.

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मामला क्रमांक Cr. A. 1117/93 सन् ~~200~~

बिरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

3. The nature of death was reported to be homicidal. After completion of the investigation charge sheet was filed in the Court of Judicial Magistrate First Class, Dharamjaigarh who in turn committed the case to the Sessions Judge, Raigarh from where the learned Additional Sessions Judge received the case on transfer for trial.

4. The prosecution in order to establish the charge examined 11 witnesses. The statement of the accused was recorded under Section 313 of the Code of Criminal Procedure in which he denied the material appearing against him and stated that he is innocent and has been falsely implicated in the crime.

5. Learned Additional Sessions Judge after hearing the arguments of the Additional Public Prosecutor and the counsel for the accused/appellant convicted and sentenced the appellant as mentioned in paragraph-1 of this judgment.

6. We have heard Shri Abhay Tiwari, learned counsel for the accused/appellant and Shri UNS Deo, learned G.A. with Shri Akhil Mishra learned P.L. appearing on behalf of the State.

7. Homicidal death of deceased Shanichar is not in dispute.

8. Even the learned counsel for the accused/appellant did not dispute the involvement of the accused in the crime in question. Apart from that, Balram (P.W.1) and Batruram (P.W.2) who witnessed the crime have categorically stated that the accused requested Shanichar to allow him to construct the house on "Noutod" land of village-Tepudand but the same was refused by deceased Shanichar which was not liked by the accused.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -५-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

He went to his house, brought a pickaxe and attacked the deceased on his stomach as a result of which Shanichar received injuries on his stomach, fell down on the ground and blood started oozing out of the injuries. Shanichar died on the next day on account of the injuries.

9. The evidence of the eyewitnesses is corroborated by the medical evidence of P.W.9 Dr. G.K. Verma who has stated that on 18.06.1992 he examined the dead body of Shanichar and found that there was an injury of stab wound on the right side of stomach near umbilicus region in the size of 4", on opening the stomach he found the intestine and right kidney were damaged, clotted blood was present, the injury was ante-mortem and the death was homicidal in nature, the same was sufficient to cause death of the deceased, therefore, the involvement of the accused in the crime in question is established in view of the ocular and medical evidence.

10. Learned counsel for the accused/appellant argued that the accused attacked deceased only once in the heat of passion when deceased refused to accede the request made by the accused to allow him to construct the house on "Noutod" land. There was no intention of the accused to cause the death of the deceased.

11. On the other hand Mr. U.N.S. Deo with Mr. Akhil Mishra supported the judgment of the trial Court.

12. In order to appreciate the arguments advanced by the counsel for the appellant if we look into the evidence of eyewitnesses namely Balram and Jagturam in which they have stated that on the fateful day they assembled at the residence of Balbhanj to celebrate the festival of

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मामला क्रमांक Cr. A. 1117/93 सन् ~~200~~

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Dhankuti, at that time Ghurou asked Shanichar to allow him to construct a house on "Noutod" land of village Tepudand which was not accepted by Shanichar and on refusal accused immediately went to his house, brought a pick axe and attacked the deceased on the right side of the stomach and damaged the intestine and kidney as a result of which the deceased died on the next day. In order to ascertain the intention of the accused as per the law laid down by the Apex Court in the matter of **State of Rajsthan Vs. Dhool Singh** reported in **AIR 2004 SCW 24** it is to be seen, the kind of weapon, the part of the body where the injury was inflicted, the force with which the injury was inflicted and if we look into the facts of the present case, it is borne out from the record that the accused brought pick axe, a deadly weapon which is used for digging the hard surface of land and he assaulted on a vital part i.e. stomach and as a result of that single blow the intestine and kidney were damaged and blood started oozing out of the injury and the doctor has opined that the injury was sufficient to cause death.

13. Thus from the evidence it is established that the accused did not like the refusal by Shanichar i.e. not permitting the accused to construct the house and he brought a deadly weapon i.e. pick axe and assaulted the deceased on the vital part, that makes the intention of accused to cause death of Shanichar, therefore, we are of the considered opinion that the arguments advanced by the learned counsel for the appellant are devoid of merit and we do not find any illegality or infirmity in the judgment of the trial Court. The appeal is liable to be dismissed and the same is dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dhirendra Mishra
Judge